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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JOAQUIN GUERRERO,

Defendant and Appellant.

F077061

(Super. Ct. No. 16CMS1656)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kings County. Michael J. Reinhart, Judge.

Patricia L. Brisbois, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Carlos A. Martinez and Kelly E. LeBel, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Poochigian, J. and Detjen, J.

Joaquin Guerrero (appellant) contends his conviction for molesting a child was time-barred by the statute of limitations and must be reversed. Respondent agrees, and we concur.

BACKGROUND

Appellant's stepdaughter was 17 years old in November 2017. She recalled appellant moving in with her and her mother approximately 10 years earlier. The stepdaughter recalled three separate instances of unwanted touchings from appellant, occurring when she was between the ages of nine and 11. About three years later, the stepdaughter told her younger brother about the incidents. She also told a high school counselor in May 2016, just after she turned 16.

In May 2016, the People charged appellant with three felony counts of lewd and lascivious acts with a child age 14 or younger, occurring between January 1, 2010, and May 12, 2011. (Pen. Code,¹ § 288, subd. (a).) At a May 2017 preliminary hearing, the trial court allowed the prosecution to amend one of the three felony counts under section 288, subdivision (a) to misdemeanor annoying or molesting a child under age 18 under section 647.6, subdivision (a)(1) and held appellant over on the amended charges. The next day, the prosecution filed an information reflecting the amended misdemeanor count.

Following trial in November 2017, the jury found appellant guilty of one of the felony counts of lewd and lascivious acts and the misdemeanor count of unlawfully annoying or molesting a child; the jury acquitted appellant of the second felony allegation. The trial court denied appellant's motion for a new trial and sentenced appellant to the middle term of six years on the felony plus a concurrent 364-day term for the misdemeanor.

¹ Further statutory references are to the Penal Code.

DISCUSSION

Section 647.6, subdivision (a)(1) provides that “[e]very person who annoys or molests any child under 18 years of age shall be punished by a fine not exceeding five thousand dollars (\$5,000), by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment.” Where the victim was under the age of 14 at the time of the incident, a special statute of limitations provides that prosecution “shall be commenced within three years after commission of the offense.” (§ 802, subd. (b); *People v. McSherry* (2006) 143 Cal.App.4th 598, 604.) For purposes of applying the limitations period, the “prosecution for an offense is commenced when” an information is filed, a complaint is filed charging a misdemeanor, or the defendant is arraigned on a complaint that charges a felony. (§ 804, subs. (a)–(c).)

Although the parties disagree whether “prosecution commenced” in May 2016 or May 2017, they agree either date exceeded the three-year limitations period from the latest date appellant’s crimes were alleged to have occurred, on May 12, 2011. The trial court was, therefore, without jurisdiction over the misdemeanor allegation under section 647.6, subdivision (a)(1), and appellant’s conviction for that count must be reversed. (*In re White* (2008) 163 Cal.App.4th 1576, 1582–1583; *People v. Williams* (1999) 21 Cal.4th 335, 345.)

DISPOSITION

Appellant’s misdemeanor conviction of section 647.6, subdivision (a)(1) in count three, is reversed. The judgment is otherwise affirmed.